IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Defective Appeal from Order No. 105 of 2006

Date of decision: 20th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note:- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective Appeal from Order No. 105 of 2006

National Insurance Company Ltd.,
Through Divisional Manager,
Divisional Office, Canal Road,
Haldwani, District Nainital. ……. Appellant

Versus

1. Smt. Munni Devi W/o Late Soban Singh.
2. Sri Dheeraj Singh S/o Late Soban Singh.
3. Pankaj S/o Late Soban Singh.
4. Km. Chandni D/o Late Soban Singh
5. Km. Pooja D/o Late Soban Singh.
   O.P. No. 2 to 5 being minors
   Through their mother Smt. Munni Devi.
   All R/o Village & Patti Maletha,
   Tehsil Devprayag, District Tehri Garhwal,
   At present R/o Augustmuni,
   Tehsil & District Rudraprayag.
6. Sri Gaje Singh S/o Awatar Singh,
   R/o Village Kamsal, Post Jogoth,
   Tehsil Ukhimath, District Rudraprayag.
7. Sri Madan Singh S/o Sher Singh,
   R/o Village Kyuinja, Patwari Circle Bhatwari Sunar,
   Tehsil Ukhimath,
   District Rudraprayag. …… Respondents

Mr. Prabhat Pandey, Advocate for the appellant.
None for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (ORAL)

Mr. Prabhat Pandey, Advocate for the appellant.

None for the respondents.

2. On due consideration of the grounds taken in the affidavit filed in support of the delay condonation application, we are satisfied that the appellant has succeeded in showing sufficient cause for the delay in filing the appeal.

3. CLMA No. 9123 of 2006, therefore, is allowed and the delay in filing the appeal is hereby condoned.

4. Mr. Prabhat Pandey, the learned counsel for the appellant is heard on admission.

5. This is insurer's appeal against the Award dated 23.03.2006 passed by Motor Accident Claims Tribunal / District Judge, Rudraprayag in MACT Case No. 43 of 2005.

6. Respondents Nos. 1 to 5 (Claimants) claimed compensation of Rs. 20,00,000/- for the death of Soban Singh, husband of claimant No. I Smt. Munni Devi and father of claimants Nos. 2 to 5 in the motor accident on 02.01.2005.

7. The Tribunal, on the evidence led by the parties, held that Soban Singh died on account of the injuries sustained by him in the motor accident on 02.01.2005; the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing registration No. UP-18/187; and the insurer of the Jeep was liable to pay compensation to the claimants.

8. Relying upon the evidence led by the claimants about the income of the deceased, the Tribunal assessed his income at Rs. 8,929/- per month and Rs. 1,07,148/- per annum. After deducting 1/3rd of the income of the deceased as his personal expenses, the claimants' dependency was assessed at Rs. 71, 432/- per annum, By multiplying the annual dependency of Rs. 71,432/- with the multiplier of '10', the compensation was worked out to Rs. 7,14,320/-. The Tribunal awarded further sums of Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow. Thus, a total sum of Rs. 7,21,320/- was awarded as compensation to the claimants for the death of Soban Singh in the motor accident. The Tribunal, further, directed the appellant Insurance Company to pay interest at the rate of 6% per annum on the above amount of compensation in the event of its failure to pay the amount of

compensation to the claimants within a period of one month from the date of the Award.

9. Mr. Prabhat Pandey, the learned counsel for the appellant Insurance Company vehemently argued that the compensation awarded by the Tribunal is excessive.

10. Though in the memo of appeal, it has been mentioned that the appellant Insurance Company had filed an application for grant of permission under Section 170 of the Motor Vehicles Act, the learned counsel for the appellant Insurance Company could not point out any such application from the Tribunal's record. Thus, we are left with no other option but to assume that neither any application for grant of permission under Section 170 of the Motor Vehicles Act was filed before the Tribunal nor any permission under Section 170 was granted to the appellant Insurance Company by the Tribunal.

11. The Apex Court in the case of **National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and others** reported in **(2002) 7 SCC 456,** observed in paras 25 and 26:

> "25. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act of where the condition precedent specified in Section 170 is satisfied.
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> 26. For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on

> the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

12. As the appellant Insurance Company was not granted permission under Section 170 of the Motor Vehicles Act to contest the claim on all available defences, the quantum of compensation cannot be challenged in this appeal filed at the behest of the insurer of the offending vehicle Jeep.

13. In this view of the matter, the appeal filed by the appellant Insurance Company is liable to be dismissed and is hereby dismissed summarily.

14. Consequently, CLMA No. 9122 of 2006 also stands dismissed.

15. The Registry is directed to remit the amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) deposited by the appellant Insurance Company as mandatory deposit under Section 173 of the Motor Vehicles Act to the concerning Claims Tribunal for disbursal of the same to the claimants.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

20.09.2006 20.09.2006

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